

## § 1944.201

above-moderate-income farmworker and family.

[57 FR 59906, Dec. 17, 1992]

### Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

SOURCE: 53 FR 2159, Jan. 26, 1988, unless otherwise noted.

EFFECTIVE DATE NOTE: At 69 FR 69105, Nov. 26, 2004, Subpart E was removed and reserved, effective Feb. 24, 2005.

#### § 1944.201 General.

This subpart sets forth the policies and procedures and delegates authority for making Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) loans under sections 515 and 521 of the Housing Act of 1949. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA or its successor agency under Public Law 103-354 employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA or its successor agency under Public Law 103-354 employee.

[56 FR 2232, Jan. 22, 1991, as amended at 58 FR 227, Jan. 5, 1993]

#### § 1944.202 Objective.

The basic objective of RRH and RCH loans is to provide eligible persons with economically designed and constructed rental or cooperative housing and related facilities suited to their living requirements.

[56 FR 2232, Jan. 22, 1991]

#### §§ 1944.203–1944.204 [Reserved]

#### § 1944.205 Definitions.

*Accessible.* When used in respect to the public and common use area of a building containing covered multi-family dwellings, means that these areas of the building can be approached, entered, and used by individuals with handicaps.

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*Adviser to the board.* An individual or organization who will work with and provide guidance to a cooperative board.

*Agency.* The Rural Housing Service within the Rural Development mission area of the U.S. Department of Agriculture or its successor agency which administers Section 515 loans and Section 521 rental assistance.

*Amortization effective date (AED).* A date established by the accounting system on which advanced principal and any accrued interest is combined and amortized to establish a schedule of payments. This date is always the first day of a month.

*Articles of incorporation.* A document filed with a government agency containing information about the organization's structure and operation.

*Board and directors.* The governing body and members of the governing body of an organization.

*Bylaws.* Rules adopted by an organization to govern the conduct of its affairs.

*Census Designated Place (CDP).* An unincorporated population center identified by the Census Bureau.

*Community.* Cities, towns, boroughs, villages and unincorporated places which have the characteristics of an incorporated area and are easily identifiable as established concentrations of inhabited dwellings located in rural areas as defined in 7 CFR part 3550.

*Congregate housing.* Residential housing, for persons or families who are elderly, have handicaps or disabilities, consisting of private apartments and central dining facilities in which a number of specific pre-established services are provided to tenants (short of those services provided by a health care facility that provides health related care and services recognized by the medicaid program). Tenants requiring additional services not provided by the facility will acquire them or provide for them with their own financial, familial or social resources.

*Consolidated Plan.* A plan developed by a community or state addressing community planning and development that is used to support requests for assistance from the Department of Housing and Urban Development.

*Consumer cooperative.* A corporation which:

(1) Is organized under the cooperative laws of a State or Federally recognized Indian tribe;

(2) Will own and operate the housing on a cooperative basis solely for the benefit of the members;

(3) Will operate at cost and, for this purpose, any patronage refunds accruing to members as defined in §1944.205 of this subpart will not be considered gains or profits; and

(4) Will restrict membership in the housing to eligible persons and, to any extent the cooperative and FmHA or its successor agency under Public Law 103-354 permit, to others in special circumstances.

*Dealer-contractor.* A person, firm, partnership or corporation in the business of selling and servicing manufactured homes and developing sites for manufactured homes for persons who purchase such homes for purposes other than resale. Dealer-contractors will be qualified as shown in 7 CFR part 3550, except all processing will be handled by the servicing official rather than the County Supervisor.

*Development cost.* The cost of constructing, purchasing, improving, altering, or repairing housing and related facilities and the value or cost of purchasing and improving the necessary land. Costs that can be paid for with RRH and RCH loan funds are detailed in §1944.212 of this subpart.

*Dwelling unit.* A residence for a family of one or more persons, and includes, in addition to those that would normally come to mind, units in which sleeping accommodations are provided but toileting or cooking facilities are shared, such as dormitories or shelters for the homeless.

*Elderly (Senior Citizen).* A person who is at least 62 years old. The term elderly (senior citizen) also means individuals with handicaps or disabilities as separately defined in this section, regardless of age.

*Elderly family.* A household where the tenant, cotenant, member or comember (individual) is at least 62 years old, disabled, or handicapped as defined separately in this section. An elderly family may include a person(s) younger than 62 years of age who is essential to

the care and well-being of the person who is elderly, disabled, and/or handicapped. (To receive an elderly family deduction, the person who is elderly, or has disabilities or handicaps must be the tenant, cotenant, member or comember.)

*Elderly household.* A household where the tenant or co-tenant is at least 62 years of age, handicapped, or disabled as defined in §1944.205(h) of this subpart. An elderly household may include a person(s) younger than 62 years of age who is essential to the elderly, handicapped, or disabled person's care and well-being. (To receive an elderly household deduction, the elderly, handicapped, or disabled person must be the tenant or cotenant.)

*Eligible tenants or cooperative members.* Persons who are elderly, or have handicaps or disabilities and very low-, low-, or moderate-income households or any combination thereof as planned for the project and shown on the applicant's loan resolution or loan agreement and who meet the eligibility requirements of exhibit B to subpart C of part 1930 of this chapter. In the case of cooperative housing projects, all members must have a very low, low, or moderate income except that any member who is admitted as an eligible member of the cooperative may not subsequently be deprived of his/her membership or tenancy by reason of no longer meeting the income eligibility requirements as outlined in 7 CFR 3550.53.

*EZ/EC.* Empowerment Zone or Enterprise Community.

*Familial status.* One or more individuals (who have not attained the age of 18) being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person, or a person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

*Gains or profits.* For the purpose of the patronage capital refund, gains and profits do not include dividends payable on stock which is nonvoting, limited as to the amount of dividends that

can be paid thereon and limited as to liquidation value in the event of corporate dissolution.

*Group home.* Housing that is occupied by tenants who are elderly, or have handicaps, or disabilities sharing living space within a rental unit in which a group home resident assistant may be required.

*Household.* One or more persons who maintain or will maintain residency in one rental or cooperative unit, but not including a resident assistant or chore service worker.

*HUD.* The U.S. Department of Housing and Urban Development.

*Individual.* A natural person.

*Individual with disability.* A person is considered disabled if the person meets the criteria of either of the following:

(1) The person has an inability to engage in any substantial gainful activity, but with use of auxiliary aids apparatus can otherwise participate in gainful activity, by reason of any medically determinable physical or mental impairment where the disability:

(i) Has lasted or can be expected to last for a continuous period of not less than 12 months, or which can be expected to result in death, and

(ii) Substantially impedes the ability to live independently, and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions, or

(iv) In the case of a sight impaired person who is at least 55 years old (within the meaning of sight impairment as determined in section 223 of The Social Security Act), is unable, because of the sight impairment, to engage in substantial gainful activity in which he/she has previously engaged with some regularity over a substantial period of time.

(v) Receipt of veteran's benefits or Social Security Disability Payments for disability, whether service oriented or otherwise, does not automatically establish disability.

(2) The person has a developmental disability; a severe, chronic disability which:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairment; and

(ii) Was manifested before age 22; and

(iii) Is likely to continue indefinitely; and

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living; and

(G) Economic self-sufficiency.

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care or treatment, or for other services which are of lifelong or extended duration and are individually planned and coordinated.

*Individual with handicap.* (1) A person with a physical or mental impairment that:

(i) Is expected to be of long-continued and indefinite duration; and

(ii) Substantially impedes the person or is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions.

(2) The term handicap further means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current illegal use of or addiction to a controlled substance. As used in this definition:

(i) Physical or mental impairment includes:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special senses organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatics; skin; and endocrine; or

(B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and special learning disabilities. The term *physical or mental impairment* includes, but is not limited

to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus (HIV) infection, acquired immunodeficiency syndrome (AIDS), mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

(ii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(iii) Has a record of such an impairment means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more of major life activities.

(iv) Is regarded as having an impairment means:

(A) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(C) Has one of the impairments defined in paragraphs (2)(i)(A) and (2)(i)(B) of this definition but is treated by another person as having such an impairment.

**Initial operating capital.** Cash to pay for costs such as property and liability insurance premiums, fidelity coverage premiums if an organization, utility hookup deposits, maintenance equipment, movable furnishings and equipment, printing lease forms, and other initial operating expenses. The initial operating capital will be at least 2 percent of the total development cost of the project.

**Interested parties.** Any person who has or will have a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project or activity shall include but not be limited to any developers, contractors, and consultants involved in the appli-

cation for assistance under this title or the planning, development, or implementation of the project or activity. Residency of an individual in housing for which assistance is being sought shall not, by itself, be considered a pecuniary interest.

**LIHTC.** Low-income housing tax credits.

**Limited equity.** The amount of funds which have accumulated in the cooperative member's patronage capital account (defined in §1944.205) and as described in exhibit H of this subpart.

**Limited partnership.** A partnership consisting of one or more general partners who are jointly and severally responsible for conducting the business of the partnership, and one or more special partners contributing cash in a specific amount as capital to the common stock, who are not liable for the debts for the partnership beyond the funds contributed.

**Limited profit basis.** An individual or organization applicant who, in order to obtain interest credit assistance, will agree to limit the amount of profit to be obtained. Applicants operating on this basis will be permitted to receive a return on their initial investment in accordance with the requirements outlined in §1944.215 of this subpart. The applicant will legally obligate itself to regulate rents, charges, rate or return, and methods of operation.

**Loans to build or acquire new units.** Any initial or subsequent loan made on or after December 15, 1989, to build or acquire new RRH units. Loans under this category may not be prepaid for the term of the mortgage.

**Low-income household.** A household having an adjusted annual income within the maximum low-income limit stated in Appendix 9 of HB-1-3550 (available in any Rural Development office).

**Management reserve.** That portion of the cooperative occupancy charge which is designated for payment of professional management services.

**Manufactured home (unit).** A dwelling unit which is built to conform with the Federal Manufactured Home Construction and Safety Standards and Farmers Home Administration (FmHA) or its successor agency under Public Law 103-

354 thermal requirements. Manufactured homes are described further in exhibit J of subpart A of part 1924 of this chapter.

*Manufactured home project.* A parcel(s) of land located in the same community which contain two or more manufactured home units one each parcel for rental or cooperative member occupancy and operated under one management plan with one loan agreement/resolution. For a cooperative housing project, the parcels of land must be in the same neighborhood and in a clustered configuration.

*Maximum debt limit (MDL).* The maximum amount that FmHA or its successor agency under Public Law 103-354 will lend for a project based on the appraised value or total development cost, whichever is less, multiplied by 95, 97, or 102 percent in accordance with § 1944.213(b) of this subpart.

*Member.* A person who has executed documents pertaining to a cooperative housing type of living arrangement and has committed himself/herself to upholding the cooperative concept.

*MFH.* Multi-Family Housing.

*Moderate-income household.* A household having an adjusted annual income within the maximum moderate-income limit stated in Appendix 9 of HB-1-3550 (available in any Rural Development office).

*Modification.* Any change to the public or common use areas of a building or any change to a dwelling unit to comply with handicap accessibility.

*NOFA.* Notice of funds availability.

*Occupancy agreement.* A contract setting forth the rights and obligations of the cooperative member and the cooperative, including the amount of the monthly occupancy charge and the other terms under which the member will occupy the housing. An example of the agreement is in exhibit J of this subpart.

*OGC.* The Regional Attorney or the Attorney in Charge in the field office of the Office of the General Counsel (OGC) of the United States Department of Agriculture.

*Organization.* A private nonprofit corporation, profit corporation, consumer cooperative, association, State, or local public agency, trust, partnership, or limited partnership.

*Other government assistance.* Any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof. Such related assistance shall include but not be limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

*Owner-builder.* A qualified builder-applicant who has experience and has demonstrated the ability and capability to build a RRH project.

*Patronage capital refund.* Amounts received by the cooperative in excess of operating costs and expenses which have been assigned to members' patronage capital accounts each year of membership in the cooperative.

*Pecuniary Interest.* Financial concern or financial gain.

*Private nonprofit corporation.* A corporation which:

- (1) Is controlled by private persons or interests;
- (2) Is organized and operated for purposes other than making gains or profits for the corporation or its members;
- (3) Is legally precluded from distributing to its members any gains or profits during its existence; and
- (4) In the event of its dissolution, is legally bound to transfer its net assets to a nonprofit corporation of a similar type or to a public corporation which will operate the housing for the same or similar purposes.

*Project.* The total number of rental or cooperative housing units that are operated under one management plan with one loan agreement/resolution.

*Public use areas.* Interior or exterior rooms or spaces of a building that are made available to the general public.

*RCH.* Rural Cooperative Housing.

*REAP.* Rural Economic Area Partnership.

*Resident assistant.* A person(s) residing in a tenant's housing unit who is essential to the well-being and care of person(s) who are elderly, or have handicaps or disabilities residing in the unit but is not obligated for the person's financial support and would not be living in the unit except to provide the needed support services. While the resident assistant may be a family member, the resident assistant may

not be a dependent for tax purposes and is not subject to the eligibility requirements of a tenant or member. A resident assistant is not a chore service worker. A resident assistant may function in any type of housing affected by this subpart.

*RHS.* Rural Housing Service.

*RRH.* Rural Rental Housing.

*Rural area.* Open country or rural places as defined in §3550.10 of this title.

*Rural rental housing.* Structures in a rural area which are or will be suitable for, and available to, eligible tenants on a rental basis for dwelling use. The structures may include related facilities where appropriate.

*Section 515.* Section 515 of title V of the Housing Act of 1949 (42 U.S.C. 1485 *et seq.*).

*Security value.* The present market value of the real estate offered as security for the loan as determined by the loan approval official less the unpaid principal balance plus past due interest on any other liens against it. Other liens will include any prior liens and Junior liens to be or likely to be taken or subordinated at or immediately after loan closing.

*Service agreement.* A written agreement between the borrower and service provider detailing the specific service to be provided, the cost of the service and length of time the service will be provided.

*Service plan.* A written plan describing how services will be provided to a FmHA or its successor agency under Public Law 103-354 financed project. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

*Servicing office.* FmHA or its successor agency under Public Law 103-354 servicing office or other place designated by the FmHA or its successor agency under Public Law 103-354 State Director where loan requests are processed.

*Servicing official.* FmHA or its successor agency under Public Law 103-354 servicing official or other FmHA or its successor agency under Public Law 103-354 staff member designated by the

State Director to be responsible for processing loan requests.

*State Agency.* The Agency within a State that has been given the responsibility to allocate low-income tax credits.

*Subscription agreement.* The initial contract between the prospective cooperative member and the cooperative specifying the terms of application for membership and the amount of the membership fee contributed by the member. An example of the agreement is in exhibit I of this subpart.

*Very low-income household.* A household having an adjusted annual income within the maximum very low-income limit stated in Appendix 9 of HB-1-3550 (available in any Rural Development office).

[56 FR 2232, Jan. 22, 1991; 56 FR 47376, Sept. 19, 1991, as amended at 56 FR 66960, Dec. 27, 1991; 58 FR 40951, July 30, 1993; 58 FR 44263, Aug. 20, 1993; 59 FR 6886, 6897, Feb. 14, 1994; 62 FR 25066, May 7, 1997; 62 FR 67222, Dec. 23, 1997; 67 FR 78328, Dec. 24, 2002]

#### §§ 1944.206–1944.210 [Reserved]

#### § 1944.211 Eligibility requirements.

(a) *Eligibility of applicant.* To be eligible for an RCH or RCH loan, the applicant must:

(1) Be a citizen of the United States or a legally admitted alien for permanent residence in the United States; an organization as defined in §1944.205 of this subpart; or an American Indian tribe, band, group, or nation (including Alaskan Indians, Aleuts, Eskimos, and any Alaskan native village), which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512).

(2) Be unable to obtain the necessary credit from private or cooperative sources on terms and conditions that allow establishment of rent or occupancy charges within the payment ability of eligible tenants or members.

(i) For an individual, the assets of both the applicant and spouse will be considered.

(ii) For nonprofit organizations, the assets of the individual members will not be considered.